

SENATE BILL 1967

By Norris

AN ACT to amend Tennessee Code Annotated, Title 39
and Title 40, relative to criminal penalties,
procedure and sentencing.

WHEREAS, The General Assembly of the state of Tennessee finds that reducing violent crime would greatly improve the safety and well being of all Tennesseans;

WHEREAS, The General Assembly takes notice of significant decreases in violent gun crime in other states following enhancement of punishment for repeat violent criminal offenders;

WHEREAS, The General Assembly recognizes that legal possession and use of firearms is a protected and highly valued fundamental right of Americans but illegal possession and use of firearms is a major component of violent crime;

WHEREAS, The General Assembly has determined that focusing on the most hardened, violent, unrepentant criminals, terrorists and predators is a logical way to improve government's performance in the area of public safety; and

WHEREAS, The General Assembly finds that protecting public safety and preserving order is a primary obligation of government and essential for the continual improvement of education, orderly delivery of healthcare, efficient transaction of commerce and preservation of freedom; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, is amended by adding the following, as a new, appropriately designated section:

(a) Any person who employs a firearm during the commission of a felony, attempt to commit a felony or the fleeing from or escape from the commission of a felony or the fleeing from or escape from the attempt to commit a felony commits the offense of employing a firearm during the commission of a felony.

(b) Any person who possesses any handgun, machine gun, short-barreled rifle or short-barreled shotgun during the commission of any felony offense commits the offense of possession of a handgun, machine gun, short-barreled rifle or short-barreled shotgun during the commission of a felony.

(c) The offenses set forth in subsections (a) and (b) are applicable to all felonies wherein the possession or employing of a firearm is not an element of the felony. In cases where the possession or employing or use of a firearm are elements of the offense committed the state may elect to prosecute under a lesser offense wherein possession or employing a firearm is not an element of the offense and this section.

(d) Possessing a handgun, machine gun, short-barreled rifle or short-barreled shotgun or employing a firearm during the commission of a felony are specific offenses, which shall be plead in a separate count of the indictment or presentment and tried before the same jury and at the same time as the felony. The jury shall determine the innocence or guilt of the defendant unless the defendant and the state of Tennessee waive the jury.

(e) Possession of a handgun, machine gun, short-barreled rifle or short-barreled shotgun during the commission of a felony is a lesser included offense of employing a firearm during the commission of a felony.

(f) Employing a firearm during the commission of a felony is a felony punishable by the service of ten (10) years in the penitentiary at one hundred percent (100%). The defendant shall be required to serve the entire sentence undiminished by any sentence credits. Such sentence shall not be reduced for any reason. This sentence is to be served consecutive to any other sentence the defendant is to serve or is serving and is nonprobable.

(g) Possession of a handgun, machine gun, short-barreled rifle or short-barreled shotgun during the commission of a Class A, B or C felony offense is punishable by the service of six (6) years in the penitentiary at one hundred (100%) percent. The defendant shall be required to serve the entire sentence undiminished by any sentence credits. Such sentence shall not be reduced for any reason. This sentence is to be served consecutive to any other sentence the defendant is to serve or is serving and is nonprobable.

(h) Possession of a handgun, machine gun, short-barreled rifle or short-barreled shotgun during the commission of a Class D or E felony offense is punishable by the service of three (3) years in the penitentiary at one hundred (100%) percent. The defendant shall be required to serve the entire sentence undiminished by any sentence credits. Said sentence shall not be reduced for any reason. This sentence is to be served consecutive to any other sentence the defendant is to serve or is serving and is nonprobable.

SECTION 3. Tennessee Code Annotated Section 39-17-1307, is amended by deleting subsections (b) and (c) and substituting the following:

(b) A person commits an offense who possesses a handgun and has been convicted of a felony offense.

(1) If the person has been previously convicted of a Class A, B or C felony offense, then a violation of this subsection is a Class C felony.

(2) If the defendant has been previously convicted of a Class D or E felony offense, then a violation of this subsection is a Class E felony.

(3) Any sentence imposed under this subsection is to be served consecutive to any other sentence the defendant is serving or has to serve.

(4) The prior felony conviction or convictions that the defendant has been convicted of that qualify the defendant for prosecution under this subsection are elements of the offense and shall be proved in the state's case in chief.

(5) A conviction includes convictions under the laws of any other state or government which if committed in this state would have constituted a felony offense. If the offense committed under the named laws of another state or government is not named a felony in this state the court shall look to the elements of the offense to determine applicability.

SECTION 4. Tennessee Code Annotated Section 39-17-1308, is amended by deleting "39-17-1307" and substituting "39-27-1307(a)" in the first line of subsection (a) and by deleting "39-17-1307(b)(1)" in subsection (b) and substituting instead "39-17-1307(b)".

SECTION 5. This act shall take effect January 1, 2008, the public welfare requiring it.